

MICHIGAN STANDARDS FOR IMPOSING LAWYER SANCTIONS

SIDE BY SIDE COMPARISON OF THE

PROPOSED STANDARDS
PUBLISHED FOR COMMENT
BY THE MICHIGAN SUPREME COURT

WITH THE

STANDARDS PROPOSED BY THE
MICHIGAN ATTORNEY DISCIPLINE BOARD

AND THE

STANDARDS RECOMMENDED BY
DONALD D. CAMPBELL

WITH EXPLANATORY NOTES REGARDING THE DERIVATION OF THE VERSION
PUBLISHED FOR COMMENT IN THE COURT'S JULY 29, 2003 ORDER, FILE NO. 2002-29.

PREFACE

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
These Michigan Standards for Imposing Lawyer Sanctions were adopted by the Michigan Supreme Court on [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. These standards may be amended or modified only by the Court.	<u>These Michigan Standards for Imposing Lawyer Sanctions were adopted by the State of Michigan Attorney Discipline Board (ADB or Board) on [date] under the authority granted by the Michigan Supreme Court in its order dated [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. Pursuant to the Court's order, these standards may be amended by the Board from time to time. The Court may at any time modify these standards or direct the Board to modify them.</u>	These Michigan Standards for Imposing Lawyer Sanctions were adopted by the Michigan Supreme Court on [date], and are intended for use by the Attorney Discipline Board and its hearing panels in imposing discipline following a finding or acknowledgment of professional misconduct. These standards may be amended or modified only by the Court.

NOTES

The Campbell recommendation was published.

DEFINITIONS

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The definitions contained in the Commentary to Rule 1.0 of the Michigan Rules of Professional Conduct (MRPC) and in Michigan Court Rule (MCR) 9.101 are incorporated by reference.</p> <p>"Intent" is the conscious objective or purpose to accomplish a particular result.</p> <p>"Negligence" is the failure of a lawyer to exercise the degree of care that a reasonable lawyer would exercise in the situation.</p>	<p>"Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" injury to "little or no" injury; a reference to "injury" alone indicates any level of injury greater than "little or no" injury.</p> <p>"Intent" is the conscious objective or purpose to accomplish a particular result.</p> <p>"Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.</p> <p>"Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard <u>exercise the degree</u> of care that a reasonable lawyer would exercise in the situation.</p> <p>"Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. <u>The likelihood and gravity of the potential injury are factors to be considered in deciding the level of discipline.</u></p>	<p>The relevant definitions applicable to these standards are contained in Michigan Rules of Professional Conduct (MRPC) 1.0.</p> <p>"Suspension", as that term is used in these Standards, is defined under Standard 2.3 below.</p>

NOTES

The published version differs from both the ADB and the Campbell proposals.

A. Purpose and Nature of Sanctions**1.1 PURPOSE OF LAWYER DISCIPLINE PROCEEDINGS**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.	The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.	Discipline for misconduct is not intended as punishment for wrongdoing, but for the protection of the public, the courts, and the legal profession.

NOTES

The ADB proposal was published.

A. Purpose and Nature of Sanctions**1.2 PUBLIC NATURE OF LAWYER DISCIPLINE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Ultimate disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.	Ultimate disposition of lawyer discipline should be public in cases of disbarment, suspension, and reprimand. Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, should private discipline be imposed.	[Reserved]

NOTES

The ADB proposal was published.

A. Purpose and Nature of Sanctions**1.3 PURPOSE OF THESE STANDARDS**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(J)(1). These Standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed upon a lawyer.	These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing a <u>preponderance of the evidence or acknowledgment</u> that a member of the legal profession has violated a provision of the Model Michigan Rules of Professional Conduct or <u>subchapter 9.100 of the Michigan Court Rules</u> . Descriptions in these standards of substantive disciplinary offenses are not intended to create <u>independent</u> grounds for determining culpability independent of the Model Rules . These Standards constitute a model, setting forth a comprehensive system for determining sanctions; <u>are designed to</u> permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to <u>while also promoteing</u> : (1) consideration of all factors relevant to imposing the appropriate level of sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; <u>and</u> , (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses within and among jurisdictions .	These standards are designed for use in imposing a sanction or sanctions following the entry of a finding of misconduct pursuant to MCR 9.115(J)(1). These Standards are designed to promote fairness, predictability, and continuity in the imposition of sanctions. They are also designed to provide a focus for appellate challenges concerning the appropriate level of discipline imposed upon a lawyer.

NOTES

The Campbell recommendation was published.

B. Sanctions and Other Consequences for Misconduct**2.1 SCOPE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.	A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.	A disciplinary sanction is imposed on a lawyer upon a finding or acknowledgment that the lawyer has engaged in professional misconduct.

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct**2.2 DISBARMENT**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Disbarment means revocation of the license to practice law. An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124, but may not do so until at least 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.	<p>Disbarment terminates the individual's status as a lawyer means revocation of the license to practice law. Where disbarment is not permanent, procedures should be established for a lawyer who has been disbarred to apply for readmission, provided that:</p> <p>(1) no application should be considered for five years from the effective date of disbarment; and</p> <p>(2) the petitioner must show by clear and convincing evidence:</p> <p>— (a) successful completion of the bar examination; and</p> <p>— (b) rehabilitation and fitness to practice law.</p> <p><u>An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124 but may not do so until 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.</u></p>	Disbarment means revocation of the license to practice law. An attorney whose license to practice law has been revoked may petition for reinstatement under MCR 9.124 but may not do so until <u>at least</u> 5 years have elapsed since revocation of the license. Eligibility for reinstatement is determined under MCR 9.123, which requires a disbarred attorney to establish by clear and convincing evidence the elements of MCR 9.123(B) and requires recertification by the Board of Law Examiners.
NOTES		
The Campbell recommendation was published. It adds to the ADB proposal the words “at least” where emphasized above.		

B. Sanctions and Other Consequences for Misconduct**2.3 SUSPENSION**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Suspension is the removal of a lawyer from the practice of law for not less than 30 days. See MCR 9.106(2). An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.	Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time not less than 30 days. See MCR 9.106(2). Generally, suspension should be for a period of time equal to or greater than six months, but in no event should the time period prior to application for reinstatement be more than three years. Procedures should be established to allow a suspended lawyer to apply for reinstatement, but a lawyer who has been suspended should not be permitted to return to practice until he has completed a reinstatement process demonstrating rehabilitation and fitness to practice law. An attorney suspended for 180 days or more is not eligible for reinstatement until the attorney has petitioned for reinstatement under MCR 9.124, has established by clear and convincing evidence the elements of MCR 9.123(B), and has complied with other applicable provisions of MCR 9.123.	Suspension, as that term is used in these Standards, means the loss of the privilege to practice law for a term of no less than 180 days and until the lawyer is reinstated under MCR 9.124.

NOTES

The ADB proposal was published.

B. Sanctions and Other Consequences for Misconduct**2.4 INTERIM SUSPENSION**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes: (a) automatic suspension upon conviction of a felony (MCR 9.120(B)) or, (b) suspension of a lawyer who fails to comply with the lawful order of a hearing panel, the Board, or the Supreme Court (MCR 9.127(A)).	Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes: (a) automatic suspension upon conviction of a “serious crime” <u>felony (MCR 9.120(B))</u> or, (b) suspension when the of a lawyer’s continuing conduct is or is likely to cause immediate and serious injury to a client or the public who fails to comply with the lawful order of a hearing panel, the Board or the Supreme Court (MCR 9.127(A)).	Interim suspension is the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. Interim suspension includes: (a) automatic suspension upon conviction of a felony (MCR 9.120(B)) or, (b) suspension of a lawyer who fails to comply with the lawful order of a hearing panel, the Board or the Supreme Court (MCR 9.127(A)).

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct**2.5 REPRIMAND**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Reprimand is a form of public discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.	Reprimand, also known as censure or public censure, is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.	Reprimand is a form of public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct**2.6 ADMONITION**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Admonition, also known as private reprimand, is a form of nonpublic discipline that declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.	<u>[Reserved]</u> Admonition, also known as private reprimand, is a form of non-public discipline which declares the conduct of the lawyer improper, but does not limit the lawyer's right to practice.	[Reserved]

NOTES

The published version is identical to Standard 2.6 of the ABA Standards.

B. Sanctions and Other Consequences for Misconduct**2.7 PROBATION**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Probation is a sanction that may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).	Probation is a sanction that allows a lawyer to practice law under specified conditions. Probation can be imposed alone or in conjunction with a reprimand, an admonition or immediately following a suspension. Probation can also be imposed as a condition of readmission or reinstatement which may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).	Probation is a sanction which may be imposed upon an impaired lawyer as set forth in MCR 9.121(C).

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct

2.8 OTHER SANCTIONS AND REMEDIES

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>Other sanctions and remedies that may be imposed include:</p> <p>(a) restitution;</p> <p>(b) transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121[A] and [B]);¹ or</p> <p>(c) such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions.</p> <p>¹ An attorney may be ordered transferred to inactive status under MCR 9.121(A) and (B) without a finding of misconduct.</p>	<p>Other sanctions and remedies which may be imposed include:</p> <p>(a) restitution; <u>;</u></p> <p>(b) assessment of costs <u>transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121(A)&(B))</u>¹; <u>;</u></p> <p>(c) limitation upon practice <u>such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions</u></p> <p>(d) appointment of a receiver;</p> <p>(e) requirement that the lawyer take the bar examination or professional responsibility examination;</p> <p>(f) requirement that the lawyer attend continuing education courses; and</p> <p>(g) other requirement that the state's highest court or disciplinary board deems consistent with the purposes of lawyer sanctions.</p> <p>¹ <u>An attorney may be ordered transferred to inactive status under MCR 9.121(A) and (B) without a finding of misconduct.</u></p>	<p>Other sanctions and remedies which may be imposed include:</p> <p>(a) restitution;</p> <p>(b) transfer of an incompetent or incapacitated attorney to inactive status (MCR 9.121(A)&(B))¹; or</p> <p>(c) such conditions relevant to the established misconduct as a hearing panel, the Board, or the Supreme Court deems consistent with the purposes of lawyer sanctions.</p> <p>¹ An attorney may be ordered transferred to inactive status under MCR 9.121(A) and (B) without a finding of misconduct.</p>

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct**2.9 RECIPROCAL DISCIPLINE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate. MCR 9.104(B).	Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. <u>The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate.</u> MCR 9.104(B).	Reciprocal discipline is the imposition of a disciplinary sanction on a lawyer who has been disciplined in another jurisdiction. The only issues to be addressed in the Michigan proceeding are whether the respondent was afforded due process of law in the course of the original proceedings and whether imposition of identical discipline in Michigan would be clearly inappropriate. MCR 9.104(B).

NOTES

The three versions are identical.

B. Sanctions and Other Consequences for Misconduct**2.10 READMISSION AND REINSTATEMENT**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
[DELETED]	In jurisdictions where disbarment is not permanent, procedures should be established to allow a disbarred lawyer to apply for readmission. Procedures should be established to allow a suspended lawyer to apply for reinstatement.	[DELETED]

NOTES

The published standards, the ADB proposal, and the Campbell recommendation all deleted Standard 2.10 of the ABA Standards.

C. Factors to Be Considered in Imposing Sanctions**3.0 GENERALLY**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
In imposing a sanction after a finding or acknowledgment of lawyer misconduct, the Board and hearing panels should consider the following factors: (a) the nature of the misconduct; (b) the lawyer's mental state; (c) the circumstances of the misconduct, including the existence of aggravating or mitigating factors; and (d) the precedent of the Court and the Board.	In imposing a sanction after a finding <u>or acknowledgment</u> of lawyer misconduct, a court <u>the Board and hearing panels</u> should consider the following factors: (a) the duty-violated <u>nature of the misconduct</u> ; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the <u>circumstances of the misconduct, including the existence of aggravating or mitigating factors; and</u> (<u>e</u>) <u>precedent of the Court and the Board.</u>	In imposing a sanction after a finding or acknowledgment of lawyer misconduct, the Board and hearing panels should consider the following factors: (a) the nature of the misconduct; (b) the lawyer's mental state; and, (c) the existence of relevant aggravating or mitigating factors.
NOTES		
The ADB proposal was published, except for the factor (c) (injury or potential injury). As recommended by Mr. Campbell, this factor was moved to Standards 9.22 (aggravation) and 9.32 (mitigation).		

C. Factors to Be Considered in Imposing Sanctions

3.1 APPLICATION OF STANDARDS

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:</p> <p>(a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Lawyer Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;</p> <p>(b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;</p> <p>(c) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline;</p> <p>(d) refer to the commentary and precedent to refine the recommendation; and</p> <p>(e) consider aggravating and mitigating factors (see Section E).</p>	<p><u>In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:</u></p> <p>(a) <u>Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;</u></p> <p>(b) <u>determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;</u></p> <p>(c) <u>consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline;</u></p> <p>(d) <u>refer to the commentary and precedent to refine the recommendation; and</u></p> <p>(e) <u>consider aggravating and mitigating factors (see Section E).</u></p>	<p>In considering the foregoing factors and applying these standards, hearing panels, the Board, and others should:</p> <p>(a) Consult Appendix 1 (Cross-Reference Table: Michigan Rules of Professional Conduct and Standards for Imposing Sanctions) and locate the rule violated and a reference to the pertinent standard in Section D;</p> <p>(b) determine which of the factors present in the pertinent standard apply, and select the appropriate recommended sanction;</p> <p>(c) consider whether the recommendation adequately addresses the nature or effects of the misconduct, and articulate any basis for selecting an alternative sanction as a baseline; and,</p> <p>(d) consider aggravating and mitigating factors (see Section E).</p>
NOTES		
The ADB proposal was published.		

D. RECOMMENDED SANCTIONS

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.	<u>The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.</u>	The recommended sanctions in the following standards take into account the factors set forth in Standard 3.0 and are generally appropriate for the types of misconduct specified, absent aggravating or mitigating circumstances.

NOTES

The three versions are identical.

D. Recommended Sanctions

4.0 Violations of Duties Owed to Clients

4.1 FAILURE TO PRESERVE PROPERTY HELD IN TRUST

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving the failure to preserve property held in trust in violation of MRPC 1.15:</p> <p>4.11 Disbarment is generally appropriate when a lawyer knowingly fails to preserve property held in trust.</p> <p>4.12 Suspension is generally appropriate when a lawyer fails to hold property in trust or commingles personal property with property that should have been held in trust.</p> <p>4.13 Reprimand is generally appropriate when a lawyer, in an isolated instance, negligently fails to preserve property held in trust.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving the failure to preserve client property:</p> <p>4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.</p> <p>4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing <u>knowingly or negligently deals</u> improperly with client property and causes injury or potential injury to a client.</p> <p>4.13 Reprimand is generally appropriate when a lawyer is negligent <u>engages in an isolated instance of simple negligence</u> in dealing with client property and causes <u>little or no</u> injury or potential injury to a client.</p>	<p>The following sanctions are generally appropriate in cases involving the failure to preserve property held in trust in violation of MRPC 1.15:</p> <p>4.1 Disbarment is generally appropriate when a lawyer knowingly fails to preserve property held in trust.</p> <p>4.12 Suspension is generally appropriate when a lawyer fails to hold property in trust or commingles personal property with property that should have been held in trust.</p> <p>4.13 Reprimand is generally appropriate when a lawyer, in an isolated instance, negligently fails to preserve property in trust.</p>

NOTES

The Campbell recommendation was published.

4.2 FAILURE TO PRESERVE THE CLIENT'S CONFIDENCES

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving improper revelation of information in violation of MRPC 1.6 and 1.9(c):</p> <p>4.21 Disbarment is generally appropriate when a lawyer, in a scheme to benefit the lawyer or another, knowingly reveals information protected under MRPC 1.6 or 1.9(c).</p> <p>4.22 Suspension is generally appropriate when a lawyer knowingly reveals information protected under MRPC 1.6 or 1.9(c), where the revelation is not part of a scheme to benefit the lawyer or another.</p> <p>4.23 Reprimand is generally appropriate when a lawyer fails to use reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using the confidences or secrets of a client.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving improper revelation of information relating to representation of a client:</p> <p>4.21 Disbarment is generally appropriate when a lawyer, with the intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.</p> <p>4.22 Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.</p> <p>4.23 Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client.</p>	<p>The following sanctions are generally appropriate in cases involving improper revelation of information in violation of MRPC 1.6 and 1.9(c):</p> <p>4.21 Disbarment is generally appropriate when a lawyer, in a scheme to benefit the lawyer or another, knowingly reveals information protected under MRPC 1.6 and 1.9(c).</p> <p>4.22 Suspension is generally appropriate when a lawyer knowingly reveals information protected under MRPC 1.6 and 1.9(c), where the revelation is not part of a scheme to benefit the lawyer or another.</p> <p>4.23 Reprimand is generally appropriate when a lawyer fails to use reasonable care to prevent employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client.</p>
NOTES		
The published version differs from the Campbell recommendation in Standards 4.21 and 4.22 in that it reads "under MRPC 1.6 or 1.9(c)," instead of "and."		

4.3 FAILURE TO AVOID CONFLICTS OF INTEREST

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving conflicts of interest in violation of MRPC 1.7, 1.8, 1.9(a) or (b), 1.10, 1.11, 1.12, 1.13, 5.4(c), or 6.3.</p> <p>4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of the client(s):</p> <p>(a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's in order to obtain a benefit or advantage for the lawyer or another; or</p> <p>(b) simultaneously represents clients that the lawyer knows have adverse interests in order to obtain a benefit or advantage for the lawyer or another; or</p> <p>(c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client in order to obtain a benefit or advantage for the lawyer or another; or</p> <p>(d) engages in a transaction described in MRPC 1.8(a) with a client wherein the lawyer deceives the client into believing that the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client, when the lawyer knows that the transaction and terms are unfair and unreasonable.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t <u>The following sanctions are generally appropriate in cases involving conflicts of interest:</u></p> <p>4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):</p> <p>(a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or</p> <p>(b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or</p> <p>(c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client.</p>	<p>The following sanctions are generally appropriate in cases involving conflicts of interest in violation of MRPC 1.7; 1.8; 1.9(a) and (b); 1.10; 1.11; 1.12; 1.13; 5.4(c); and, 6.3.</p> <p>4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of the client(s):</p> <p>(a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's to obtain a benefit or advantage for the lawyer or another; or</p> <p>(b) simultaneously represents clients that the lawyer knows have adverse interests to obtain a benefit or advantage for the lawyer or another; or,</p> <p>(c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client to obtain a benefit or advantage for the lawyer or another; or,</p> <p>(d) engages in a transaction described in MRPC 1.8(a) with a client where in the lawyer deceives the client into believing the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client, when the lawyer knows the transaction and terms are unfair and unreasonable.</p>
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4.3 FAILURE TO AVOID CONFLICTS OF INTEREST (CONTINUED)

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>4.32 Suspension is generally appropriate when:</p> <p>(a) a lawyer knows of a conflict of interest and does not seek to obtain consent from the present or former client after consultation; or</p> <p>(b) a lawyer knowingly violates MRPC 1.8(c)-(j).</p> <p>4.33 Reprimand is generally appropriate when a lawyer engages in a conflict of interest in violation of MRPC 1.7, 1.8, or 1.9(a) and (b), but does not knowingly violate the rule(s).</p>	<p>4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.</p> <p>4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.</p>	<p>4.32 Suspension is generally appropriate when:</p> <p>(a) a lawyer knows of a conflict of interest and does not seek to obtain consent from the present or former client after consultation; or</p> <p>(b) a lawyer knowingly violates MRPC 1.8(c)-(j).</p> <p>4.33 Reprimand is generally appropriate when a lawyer engages in a conflict of interest in violation of MRPC 1.7, 1.8 and/or 1.9(a) and (b), but did not knowingly violate the rule(s).</p>
NOTES		
The Campbell recommendation was published with minor changes.		

Alternative A to Proposed Standards 4.4 and 4.5**4.4 LACK OF DILIGENCE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice of law and causes serious or potentially serious injury to a client; or</p> <p>(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or</p> <p>(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or</p> <p>(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, † The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice <u>of law</u> and causes serious or potentially serious injury to a client; or</p> <p>(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or</p> <p>(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or</p> <p>(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.</p>	<p>The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c); 1.2(a) and (b); 1.3; and, 1.4:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice of law; or</p> <p>(b) a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client in a reasonably diligent and prompt manner;</p> <p>(b) a lawyer engages in a pattern of neglect; or,</p> <p>(c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or handles a matter without preparation adequate in the circumstances.</p>

NOTES

"Note that Alternative A, above, is the ADB's original proposal concerning lawyer incompetence, with changes agreed upon by the Court indicated by strikeovers (that language will be deleted if the Court decides to enter an amended order)." Supreme Court Note, July 29, 2003 order in File No. 2002-29.

Alternative A to Proposed Standards 4.4 and 4.5**4.5 LACK OF COMPETENCE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:</p> <p>4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.</p> <p>4.52 Suspension is generally appropriate when a lawyer knowingly fails to provide competent representation, and causes injury or potential injury to a client.</p> <p>4.53 Reprimand is generally appropriate when a lawyer:</p> <p>(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or</p> <p>(b) negligently fails to provide competent representation and causes injury or potential injury to a client.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving failure to provide competent representation to a client:</p> <p>4.51 Disbarment is generally appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer's conduct causes injury or potential injury to a client.</p> <p>4.52 Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent <u>knowingly fails to provide competent representation</u>, and causes injury or potential injury to a client.</p> <p>4.53 Reprimand is generally appropriate when a lawyer:</p> <p>(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or</p> <p>(b) is negligently in determining whether he or she is competent to handle a legal matter <u>fails to provide competent representation</u> and causes injury or potential injury to a client.</p>	<p>[No Proposed Alternative]</p>

NOTES

"Note that Alternative A, above, is the ADB's original proposal concerning lawyer incompetence, with changes agreed upon by the Court indicated by strikeovers (that language will be deleted if the Court decides to enter an amended order)." Supreme Court Note, July 29, 2003 order in File No. 2002-29.

Alternative B to Proposed Standards 4.4 and 4.5**4.4 LACK OF DILIGENCE**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c), 1.2(a) or (b), 1.3, or 1.4:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice of law; or</p> <p>(b) a lawyer knowingly fails to perform services for a client; or</p> <p>(c) a lawyer engages in a pattern of neglect with respect to client matters.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client in a reasonably diligent and prompt manner; or</p> <p>(b) a lawyer engages in a pattern of neglect; or</p> <p>(c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or handles a matter without preparation adequate under the circumstances.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice of <u>law</u> and causes serious or potentially serious injury to a client; or</p> <p>(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or</p> <p>(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or</p> <p>(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.</p> <p>[SAME AS IN ALTERNATIVE A ABOVE]</p>	<p>The following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client in violation of MRPC 1.1(a)-(c); 1.2(a) and (b); 1.3; and, 1.4:</p> <p>4.41 Disbarment is generally appropriate when:</p> <p>(a) a lawyer abandons the practice of law; or</p> <p>(b) a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures.</p> <p>4.42 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly fails to perform services for a client in a reasonably diligent and prompt manner;</p> <p>(b) a lawyer engages in a pattern of neglect; or,</p> <p>(c) a lawyer handles a matter that the lawyer knows or should know that the lawyer is not competent to handle.</p> <p>4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or handles a matter without preparation adequate in the circumstances.</p> <p>[SAME AS IN ALTERNATIVE A ABOVE]</p>

NOTES

Alternative B is the Campbell recommendation. It treats violations of all of the rules enumerated in one standard (4.4, captioned "Lack of Diligence") instead of treating competence under Standard 4.5 (see ADB/ABA Standard 4.5).

Alternative B to Proposed Standards 4.4 and 4.5**4.5 CHARGING ILLEGAL OR CLEARLY EXCESSIVE FEES**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving the charging of an illegal or clearly excessive fee in violation of MRPC 1.5:</p> <p>4.51 Disbarment is not generally appropriate when a lawyer charges or collects a clearly excessive fee absent the presence of significant factors in aggravation.</p> <p>4.52 Suspension is generally appropriate when a lawyer knowingly charges or collects a clearly excessive fee.</p> <p>4.53 Reprimand is generally appropriate when a lawyer negligently charges or collects a clearly excessive fee.</p>	<p>[No Proposed Alternative]</p>	<p>The following sanctions are generally appropriate in cases involving the charging of an illegal or clearly excessive fee in violation of MRPC 1.5:</p> <p>4.51 Disbarment is not generally appropriate when a lawyer charges or collects a clearly excessive fee absent the presence of significant factors in aggravation.</p> <p>4.52 Suspension is generally appropriate when a lawyer knowingly charges or collects a clearly excessive fee.</p> <p>4.53 Reprimand is generally appropriate when a lawyer negligently charges or collects a clearly excessive fee.</p>
NOTES		
Alternative B is the Campbell recommended Standard 4.5 which replaces competence (treated in ADB/ABA Standard 4.5 and treated by Mr. Campbell in Standard 4.4).		

4.6 LACK OF CANDOR

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of MCR 9.104(A)(2) or (3) or MRPC 8.4(b).</p> <p>4.61 Disbarment is generally appropriate when a lawyer deceives a client to obtain a benefit or advantage for the lawyer or another.</p> <p>4.62 Suspension is generally appropriate when a lawyer deceives a client, and the deception reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, but is not done to obtain a benefit or advantage for the lawyer or another.</p> <p>ALTERNATIVE A TO PROPOSED STANDARD 4.63</p> <p>4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information.</p> <p>ALTERNATIVE B TO PROPOSED STANDARD 4.63</p> <p>4.63 Reprimand is generally not appropriate when a lawyer engages in fraud, deceit or misrepresentation toward a client.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, † The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client:</p> <p>4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.</p> <p>4.62 Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.</p> <p>4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.</p>	<p>The following sanctions are generally appropriate in cases where the lawyer engages in fraud, deceit, or misrepresentation directed toward a client in violation of MCR 9.104(A)(2) and (3) and MRPC 8.4(b).</p> <p>4.61 Disbarment is generally appropriate when a lawyer deceives a client to obtain a benefit or advantage for the lawyer or another.</p> <p>4.62 Suspension is generally appropriate when a lawyer deceives a client, and the deception reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, but is not done to obtain a benefit or advantage for the lawyer or another.</p> <p>4.63 Reprimand is generally not appropriate when a lawyer engages in fraud, deceit or misrepresentation toward a client.</p>

NOTES

The Campbell recommendation was published. However, Alternative A is the ADB/ABA Standard 4.63 without reference to injury.

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving conduct in violation of MCR 9.104(A)(5) or MRPC 3.5(c), 4.1, 6.5, or 8.4(b).</p> <p>5.11 Disbarment is generally appropriate when:</p> <p>(a) a lawyer engages in serious criminal conduct, a necessary element of which includes: intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; the sale, distribution or importation of controlled substances; the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or</p> <p>(b) a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that is a seriously adverse reflection on the lawyer's fitness to practice; or</p> <p>(c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic in order to gain an advantage in the litigation for the lawyer or another; or</p> <p>(d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal in order to gain an advantage in the litigation for the lawyer or another.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate: (a) in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; or; <u>(b) in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation; or (c) in cases involving the improper handling of property entrusted to a lawyer.</u></p> <p>5.11 Disbarment is generally appropriate when:</p> <p>(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, <u>intentional</u> misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or</p> <p>(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice; <u>or</u></p> <p><u>(c) a lawyer knowingly converts the property of another entrusted to the lawyer.</u></p>	<p>The following sanctions are generally appropriate in cases involving conduct in violation of MCR 9.104(A)(5) and MRPC 3.5(c), 4.1; 6.5; and, 8.4(b).</p> <p>5.11 Disbarment is generally appropriate when:</p> <p>(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, intentional misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or</p> <p>(b) a lawyer engages in any other conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice; or,</p> <p>(c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic in order to gain an advantage in the litigation for the lawyer or another; or</p> <p>(d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal in order to gain an advantage in the litigation for the lawyer or another.</p>
Continued on next page.	Continued on next page.	Continued on next page.

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY (CONTINUED)

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>5.12 Suspension is generally appropriate when:</p> <p>(a) a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 but that nevertheless adversely reflects on the lawyer's fitness to practice; or</p> <p>(b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice; or</p> <p>(c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic without the purpose of gaining an advantage in the litigation for the lawyer or another; or</p> <p>(d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal without the purpose of gaining an advantage in the litigation for the lawyer or another.</p>	<p>5.12 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that <u>but which nevertheless</u> seriously adversely reflects on the lawyer's fitness to practice; <u>or</u></p> <p>(b) <u>a lawyer engages in conduct involving dishonesty, fraud, deceit, or knowing misrepresentation that reflects adversely on the lawyer's fitness to practice; or</u></p> <p>(c) <u>a lawyer knowingly or negligently deals improperly with the property of another entrusted to the lawyer.</u></p>	<p>5.12 Suspension is generally appropriate when:</p> <p>(a) a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11 but which nevertheless adversely reflects on the lawyer's fitness to practice; or</p> <p>(b) a lawyer engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice; or,</p> <p>(c) a lawyer knowingly mistreats a person involved in the legal process because of the person's race, gender, or other protected personal characteristic without the purpose of gaining an advantage in the litigation for the lawyer or another; or,</p> <p>(d) a lawyer knowingly engages in conduct that is discourteous and disrespectful toward a tribunal without the purpose of gaining an advantage in the litigation for the lawyer or another.</p>

NOTES

The Campbell recommendation as to Standards 5.11 and 5.12 was published. It is the ADB proposal with the addition of standards applicable to MRPC 3.5(c) and 6.5 violations, and deletion of standards dealing with a lawyer's improper handling of third party (i.e., non-client) property.

[Standard 5.13 on next page]

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY (CONTINUED)

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>ALTERNATIVE A TO PROPOSED STANDARD 5.13</p> <p>5.13 Reprimand is generally appropriate when a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11.</p> <p>ALTERNATIVE B TO PROPOSED STANDARD 5.13</p> <p>5.13 Reprimand is generally appropriate when:</p> <p>(a) a lawyer engages in criminal conduct that does not contain the elements listed in Standard 5.11 and that reflects adversely on the lawyer's fitness to practice; or</p> <p>(b) a lawyer engages in any conduct that involves dishonesty, fraud, deceit, or knowing misrepresentation and that adversely reflects on the lawyer's fitness to practice law to a slight degree; or</p> <p>(c) a lawyer engages in an isolated instance of simple negligence in dealing with the property of another entrusted to the lawyer and causes little or no injury or potential injury.</p>	<p>5.13 Reprimand is generally appropriate when:</p> <p>(a) <u>a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that reflects adversely on the lawyer's fitness to practice; or</u></p> <p>(b) a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or <u>knowing</u> misrepresentation and that adversely reflects on the lawyer's fitness to practice law <u>to a slight degree; or</u></p> <p>(c) <u>a lawyer engages in an isolated instance of simple negligence in dealing with the property of another entrusted to the lawyer and causes little or no injury or potential injury.</u></p>	<p>5.13 Reprimand is generally appropriate when a lawyer engages in criminal conduct which does not contain the elements listed in Standard 5.11.</p>

NOTES

Alternative A is the Campbell recommendation.

Alternative B is the ADB proposal.

5.2 FAILURE TO MAINTAIN THE PUBLIC TRUST

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of MCR 9.104(A)(1), MRPC 3.8, 6.4, or 8.4(c) or (d).</p> <p>5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position or either states or implies that the lawyer may improperly influence another in an official or governmental position to obtain a benefit or advantage for the lawyer or another.</p> <p>5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, resulting in prejudice to the administration of justice.</p> <p>5.23 Reprimand is generally appropriate when:</p> <p>(a) a lawyer in an official or governmental position negligently fails to follow proper procedures or rules (with the exception of the duties set forth in MRPC 6.4, which cannot be violated by simple negligence), resulting in prejudice to the administration of justice; or</p> <p>(b) a prosecutor or assistant prosecutor violates the duties set forth in MRPC 3.8(a)-(e) and the violation does not result in prejudice to the administration of justice.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, † The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official:</p> <p>5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a part or to the integrity of the legal process.</p> <p>5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.</p> <p>5.23 Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.</p>	<p>The following sanctions are generally appropriate in cases involving public officials who engage in conduct that is prejudicial to the administration of justice or who state or imply an ability to influence improperly a government agency or official in violation of MCR 9.104(1); MRPC 3.8; 6.4; and, 8.4(c) and (d).</p> <p>5.21 Disbarment is generally appropriate when a lawyer in an official or governmental position knowingly misuses the position or either states or implies that the lawyer may improperly influence another in an official or governmental position to obtain a benefit or advantage for the lawyer or another.</p> <p>5.22 Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules which results in prejudice to the administration of justice.</p> <p>5.23 Reprimand is generally appropriate when:</p> <p>(a) a lawyer in an official or governmental position negligently fails to follow proper procedures or rules (with the exception of the duties set forth in MRPC 6.4 which cannot be violated by simple negligence) which results in prejudice to the administration of justice; or,</p> <p>(b) a prosecutor or assistant prosecutor violates the duties set forth in MRPC 3.8(a)-(e) and the violation does not result in prejudice to the administration of justice.</p>
NOTES		
The Campbell recommendation was published with minor changes.		

6.0 Violations of Duties Owed to the Legal System

6.1 FALSE STATEMENTS, FRAUD, AND MISREPRESENTATION TO A TRIBUNAL

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal in violation of MRPC 3.3:</p> <p>6.11 Disbarment is generally appropriate when a lawyer knowingly makes a false statement, submits a false document, or improperly fails to disclose a material fact or adverse controlling authority, known to the lawyer and not disclosed by opposing counsel, to obtain a benefit or advantage for the lawyer or another.</p> <p>6.12 Suspension is generally appropriate when:</p> <p>(a) a lawyer engages in the conduct described in Standard 6.11 but does not do so to obtain a benefit or advantage for the lawyer or another; or</p> <p>(b) a lawyer comes to know of the falsity of material evidence the lawyer has offered to a tribunal but fails to take reasonable remedial measures.</p> <p>ALTERNATIVE A TO PROPOSED STANDARD 6.13</p> <p>6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents submitted to a tribunal are false or in taking remedial action when material information is being withheld.</p> <p>ALTERNATIVE B TO PROPOSED STANDARD 6.13</p> <p>6.13 Reprimand is generally not appropriate when a lawyer engages in false statements, fraud, and misrepresentation to a tribunal.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a <u>court tribunal</u>:</p> <p>6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the <u>court tribunal</u>, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.</p> <p>6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the <u>court tribunal</u> or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.</p> <p>6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents <u>submitted to a tribunal</u> are false or in taking remedial action when material information is being withheld and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.</p>	<p>The following sanctions are generally appropriate in cases involving conduct that involves dishonesty, fraud, deceit, or misrepresentation to a tribunal in violation of MRPC 3.3</p> <p>6.11 Disbarment is generally appropriate when a lawyer knowingly makes a false statement, submits a false document, or improperly fails to disclose a material fact or adverse controlling authority known to the lawyer and not disclosed by opposing counsel to obtain a benefit or advantage for the lawyer or another.</p> <p>6.12 Suspension is generally appropriate when:</p> <p>(a) a lawyer engages in the conduct described in Standard 6.11 but does not do so to obtain a benefit or advantage for the lawyer or another; or,</p> <p>(b) a lawyer comes to know of the falsity of material evidence the lawyer has offered to a tribunal but fails to take reasonable remedial measures.</p> <p>6.13 Reprimand is generally not appropriate when a lawyer engages in false statements, fraud, and misrepresentation to a tribunal.</p>

NOTES

Alternative A is the ADB's proposed Standard 6.13 absent references to injury. The remainder of the standard published for comment is the Campbell recommendation.

6.2 ABUSE OF THE LEGAL PROCESS

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists, in violation of MCR 9.104(A)(1), MRPC 3.1, 3.2, 3.4, 3.6, 4.4, or 8.4(c).</p> <p>6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule to obtain a benefit or advantage for the lawyer or another, or violates MRPC 3.4(a) or (b).</p> <p>6.22 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly violates a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another but resulting in prejudice to the administration of justice; or</p> <p>(b) a lawyer knowingly brings or defends a matter without a basis that is not frivolous; or</p> <p>(c) a lawyer knowingly fails to expedite litigation consistent with the interests of the client.</p> <p>6.23 Reprimand is generally appropriate when:</p> <p>(a) a lawyer violates MRPC 3.4(d)-(f) or 3.6; or</p> <p>(b) a lawyer negligently brings or defends a matter without a basis that is not frivolous; or</p> <p>(c) a lawyer negligently fails to expedite litigation consistent with the interests of the client.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, † The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:</p> <p>6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.</p> <p>6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.</p> <p>6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.</p>	<p>The following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists in violation of MCR 9.104(A)(1) MRPC 3.1; 3.2; 3.4; 3.6; 4.4; and, 8.4(c).</p> <p>6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule to obtain a benefit or advantage for the lawyer or another, and MRPC 3.4(a) and (b).</p> <p>6.22 Suspension is generally appropriate when:</p> <p>(a) a lawyer knowingly violates a court order or rule without the intent to obtain a benefit or advantage for the lawyer or another but which results in prejudice to the administration of justice; or,</p> <p>(b) a lawyer knowingly brings or defends a matter without a basis which is not frivolous; or,</p> <p>(c) a lawyer knowingly fails to expedite litigation consistent with the interests of the client.</p> <p>6.23 Reprimand is generally appropriate when:</p> <p>(a) a lawyer violates MRPC 3.4(d)-(f) or 3.6; or,</p> <p>(b) a lawyer negligently brings or defends a matter without a basis which is not frivolous; or,</p> <p>(c) a lawyer negligently fails to expedite litigation consistent with the interests of the client.</p>
NOTES		
The Campbell recommendation was published with minor changes.		

6.3 IMPROPER COMMUNICATIONS WITH INDIVIDUALS IN THE LEGAL SYSTEM

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror, or other official by means prohibited by law or in violation of MRPC 3.5(a) or (b), 4.2, or 4.3:</p> <p>6.31 Disbarment is generally appropriate when a lawyer:</p> <p>(a) intentionally tampers with a witness in an attempt to interfere with the outcome of the legal proceeding; or</p> <p>(b) makes an ex parte communication with a judge or juror in an attempt to affect the outcome of the proceeding; or</p> <p>(c) improperly communicates with someone in the legal system other than a witness, judge, or juror in an attempt to influence or affect the outcome of the proceeding.</p> <p>6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper.</p> <p>6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, † The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law:</p> <p>6.31 Disbarment is generally appropriate when a lawyer:</p> <p>(a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or</p> <p>(b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or</p> <p>(c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.</p> <p>6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.</p> <p>6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.</p>	<p>The following sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law or violates MRPC 3.5(b) and (c); 4.2; and, 4.3:</p> <p>6.31 Disbarment is generally appropriate when a lawyer:</p> <p>(a) intentionally tampers with a witness in an attempt to interfere with the outcome of the legal proceeding; or,</p> <p>(b) makes an ex parte communication with a judge or juror in an attempt to affect the outcome of the proceeding; or,</p> <p>(c) improperly communicates with someone in the legal system other than a witness, judge, or juror in an attempt to influence or affect the outcome of the proceeding.</p> <p>6.32 Suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper.</p> <p>6.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system.</p>

NOTES

The Campbell recommendation was published with grammatical and other changes.

D. Recommended Sanctions**7.0 VIOLATIONS OF OTHER DUTIES OWED AS A PROFESSIONAL**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving conduct in violation of MRPC 1.14, 1.16, 2.1, 2.3, 5.1 - 5.6, 6.2, 7.1 - 7.5, 8.1, 8.3, or 8.4(e).</p> <p>7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional to obtain a benefit or advantage for the lawyer or another.</p> <p>7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional but does not do so in order to obtain a benefit or advantage for the lawyer or another.</p> <p>7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.</p> <p>7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.</p> <p>7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.</p> <p>7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.</p>	<p>The following sanctions are generally appropriate in cases involving conduct in violation of MRPC 1.14; 1.16; 2.1; 2.3; 5.1 - 5.6; 6.2; 7.1 - 7.5; 8.1; 8.3; and 8.4(e).</p> <p>7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional to obtain a benefit or advantage for the lawyer or another.</p> <p>7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional but does not do so in order to obtain a benefit or advantage for the lawyer or another.</p> <p>7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional.</p>
NOTES		
<p>The Campbell recommendation was published. It is the ADB proposal without references to injury, MRPC 1.5 (treated under Mr. Campbell's recommended Standard 4.5) and MRPC 8.4(a) (treated under Mr. Campbell's recommended Standard 5.2).</p>		

D. Recommended Sanctions

8.0 PRACTICE OF LAW IN VIOLATION OF AN ORDER OF DISCIPLINE

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.</p> <p>8.1 Disbarment is generally appropriate when a lawyer intentionally practices law in violation of the terms of a disciplinary order.</p> <p>8.2 Generally, the same discipline imposed by the original disciplinary order should be consecutively imposed when a lawyer practices law in violation of the terms of a disciplinary order, but does not engage in such conduct knowingly.</p> <p>ALTERNATIVE A TO PROPOSED STANDARD 8.3</p> <p>8.3 Reprimand is generally not appropriate when a lawyer practices law in violation of the terms of a disciplinary order.</p> <p>ALTERNATIVE B TO PROPOSED STANDARD 8.3</p> <p>8.3 Reprimand is generally appropriate when a lawyer negligently practices law in violation of the terms of a disciplinary order.</p>	<p>Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, t The following sanctions are generally appropriate in cases involving <u>prior the practice of law in violation of an order of discipline.</u></p> <p>8.1 Disbarment is generally appropriate when a lawyer:</p> <p>(a) intentionally or knowingly violates practices law in violation of the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or</p> <p>(b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.</p> <p>8.2 Suspension is generally appropriate when a lawyer <u>knowingly practices law in violation of the terms of a disciplinary order</u> has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.</p> <p>8.3 Reprimand is generally appropriate when a lawyer:</p> <p>(a) negligently violates practices law in violation of the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or</p> <p>(b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.</p>	<p>The following sanctions are generally appropriate in cases involving the practice of law in violation of an order of discipline.</p> <p>8.1 Disbarment is generally appropriate when a lawyer knowingly practices law in violation of the terms of a disciplinary order.</p> <p>8.2 Generally, the same discipline imposed by the original disciplinary order should be consecutively imposed when a lawyer practices law in violation of the terms of a disciplinary order, but does not engage in such conduct knowingly.</p> <p>8.3 Reprimand is generally not appropriate when a lawyer practices law in violation of the terms of a disciplinary order.</p>

NOTES

ADB proposed Standard 8.1 was published. Mr. Campbell's recommended Standard 8.2 was published, and his recommended Standard 8.3 is Alternative A. Alternative B is the ADB proposal.

9-9 E. Aggravation and Mitigation**9.1 GENERALLY**

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.	After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.	After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.
NOTES		
The three versions are identical.		

9.2 AGGRAVATION

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>9.21 Definition: Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.</p> <p>9.22 Factors that may be considered in aggravation include:</p> <p>(a) degree of harm to a client, opposing party, the bar, bench, or public;</p> <p>(b) prior disciplinary offenses;</p> <p>(c) dishonest or selfish motive;</p> <p>(d) a pattern of misconduct;</p> <p>(e) multiple offenses;</p> <p>(f) obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency;</p> <p>(g) submission of false evidence or statements, or other deceptive practices, during the disciplinary process;</p> <p>(h) refusal to acknowledge wrongful nature of conduct;</p> <p>(i) vulnerability of victim;</p> <p>(j) substantial experience in the practice of law;</p> <p>(k) indifference to making restitution; and</p> <p>(l) illegal conduct, including that involving the use of controlled substances.</p>	<p>9.21 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.</p> <p>9.22 Factors which may be considered in aggravation. Aggravating factors include:</p> <p>(a) prior disciplinary offenses;</p> <p>(b) dishonest or selfish motive;</p> <p>(c) a pattern of misconduct;</p> <p>(d) multiple offenses;</p> <p>(e) bad faith obstruction of the disciplinary proceeding by <u>intentionally knowingly</u> failing to comply with rules or orders of the disciplinary agency;</p> <p>(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;</p> <p>(g) refusal to acknowledge wrongful nature of conduct;</p> <p>(h) vulnerability of victim;</p> <p>(i) substantial experience in the practice of law;</p> <p>(j) indifference to making restitution;</p> <p>(k) illegal conduct, including that involving the use of controlled substances.</p>	<p>9.2 Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.</p> <p>9.22 Factors which may be considered in aggravation include:</p> <p>(a) prior disciplinary offenses;</p> <p>(b) multiple offenses;</p> <p>(c) obstruction of the disciplinary proceeding by knowingly failing to comply with rules or orders of the disciplinary agency;</p> <p>(d) vulnerability of victim;</p> <p>(e) degree of harm to a client, opposing party, the bar, bench or public.</p>

NOTES

The published proposal mirrors the ADB's except that injury or harm caused by the misconduct has been added as the first aggravating factor. (The ADB proposed standards contained references to injury in most of Standards 4.0 - 8.0).

9.3 MITIGATION

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>9.31 Definition: Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.</p> <p>9.32 Factors that may be considered in mitigation include:</p> <p>(a) absence of any degree of harm to a client, opposing party, the bar, bench, or public;</p> <p>(b) absence of a prior disciplinary record;</p> <p>(c) absence of a dishonest or selfish motive;</p> <p>(d) serious personal or emotional problems that contributed to the misconduct;</p> <p>(e) timely good-faith effort to make restitution or to rectify consequences of misconduct;</p> <p>(f) full and free disclosure to disciplinary board or cooperative attitude toward the proceedings;</p> <p>(g) inexperience in the practice of law;</p> <p>(h) character or reputation;</p> <p>(i) physical disability that contributed to the misconduct;</p>	<p>9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.</p> <p>9.32 Factors which may be considered in mitigation. Mitigating factors include:</p> <p>(a) absence of a prior disciplinary record;</p> <p>(b) absence of a dishonest or selfish motive;</p> <p>(c) <u>serious</u> personal or emotional problems <u>which contributed to the misconduct</u>;</p> <p>(d) timely good faith effort to make restitution or to rectify consequences of misconduct;</p> <p>(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;</p> <p>(f) inexperience in the practice of law;</p> <p>(g) character or reputation;</p> <p>(h) <u>physical disability which contributed to the misconduct</u>;</p>	<p>9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.</p> <p>9.32 Factors which may be considered in mitigation include:</p> <p>(a) serious personal or emotional problems which contributed to the misconduct;</p> <p>(b) timely good faith effort to make restitution or to rectify consequences of misconduct;</p>
Continued on next page.	Continued on next page.	Continued on next page.

9.3 MITIGATION (CONTINUED)

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>(j) mental disability or chemical dependency, including alcoholism or drug abuse, when:</p> <p>(a) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;</p> <p>(b) the chemical dependency or mental disability contributed to the misconduct;</p> <p>(c) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and</p> <p>(d) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;</p> <p>(k) delay in disciplinary proceedings;</p> <p>(l) imposition of other penalties or sanctions; and</p> <p>(m) remorse.</p>	<p>(i) mental disability or chemical dependency including alcoholism or drug abuse when:</p> <p>(1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;</p> <p>(2) the chemical dependency or mental disability <u>caused contributed to</u> the misconduct;</p> <p>(3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and</p> <p>(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;</p> <p>(j) delay in disciplinary proceedings.</p> <p>(k) imposition of other penalties or sanctions;</p> <p>(l) remorse;</p> <p>(m) remoteness of prior offenses.</p>	<p>(c) mental disability or chemical dependency including alcoholism or drug abuse when:</p> <p>(1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;</p> <p>(2) the chemical dependency or mental disability contributed to the misconduct;</p> <p>(3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and,</p> <p>(4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;</p> <p>(d) delay in disciplinary proceedings</p> <p>(e) absence of any degree of harm to a client, opposing party, the bar, bench or public.</p>

NOTES

The published proposal mirrors the ADB's except that injury or harm caused by the misconduct has been added as the first aggravating factor. (The ADB proposed standards contained references to injury in most of Standards 4.0 - 8.0).

9.4 FACTORS THAT ARE NEITHER AGGRAVATING NOR MITIGATING

Standards Published for Comment by Supreme Court	Standards Proposed by Attorney Discipline Board (deletions from the ABA Standards struck through and additions <u>double underlined</u>)	Standards Recommended by Donald D. Campbell
<p>The following factors should not be considered as either aggravating or mitigating:</p> <p>(a) forced or compelled restitution;</p> <p>(b) agreeing to the client's demand for certain improper behavior or result;</p> <p>(c) withdrawal of complaint against the lawyer;</p> <p>(d) resignation before completion of disciplinary proceedings;</p> <p>(e) complainant's recommendation as to sanction; and</p> <p>(f) failure of injured client to complain.</p>	<p>The following factors should not be considered as either aggravating or mitigating:</p> <p>(a) forced or compelled restitution;</p> <p>(b) agreeing to the client's demand for certain improper behavior or result;</p> <p>(c) withdrawal of complaint against the lawyer;</p> <p>(d) resignation prior to completion of disciplinary proceedings;</p> <p>(e) complainant's recommendation as to sanction;</p> <p>(f) failure of injured client to complain.</p>	<p>The following factors should not be considered as either aggravating or mitigating:</p> <p>(a) forced or compelled restitution;</p> <p>(b) agreeing to the client's demand for certain improper behavior or result;</p> <p>(c) withdrawal of complaint against the lawyer;</p> <p>(d) resignation prior to completion of disciplinary proceedings;</p> <p>(e) complainant's recommendation as to sanction;</p> <p>(f) failure of injured client to complain.</p>

NOTES

The three versions are identical, except for minor changes to 9.4(d) in the published version.